

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ANGELA DeSTEFANO, and	:	
MICHAEL DeSTEFANO	:	
Plaintiffs	:	
v.	:	3:CV-04-2814
	:	(CHIEF JUDGE VANASKIE)
INFINITY INSURANCE COMPANY,	:	
INFINITY SELECT INSURANCE COMPANY	:	
INFINITY NATIONAL INSURANCE	:	
COMPANY	:	
Defendants	:	

ORDER

NOW, THIS 5th DAY OF MAY, 2005, having carefully considered

Defendants' Motion to Dismiss Counts I, IV and V of Plaintiff's Complaint, and having been informed during a case management conference conducted on this date that, in light of the Court's analyses of the issues, Plaintiffs have elected to withdraw Count IV, asserting a claim for breach of fiduciary duty, and Count V, asserting a cause of action under the Pennsylvania Unfair Trade Practices and Consumer Protection Law, and finding that it is not necessarily redundant to allow Plaintiffs to plead a separate cause of action for breach of the common law duty of good faith and fair dealing in addition to a claim for breach of contract, and it causes no undue prejudice to Defendants to allow Plaintiffs to do so, see Connecticut Indem. Co. v. Markman, No. Civ. 93-799, 1993 WL 304056, at *6 (E.D. Pa. Aug. 6, 1993)(recognizing that an insurer's failure to exercise the duty of good faith and fair dealing "could give rise to a breach of contract action for breach of the separate duty of

good faith and fair dealing") **IT IS HEREBY ORDERED THAT:**

1. Pursuant to Rule 41 (a) of the Federal Rules of Civil Procedure, Counts IV and V of the Complaint are **DISMISSED, WITHOUT PREJUDICE.**

2. Defendants' Motion to Dismiss Count I of the Complaint is **DENIED.**

3. This Order disposes of Defendants' Motion to Dismiss (Dkt. Entry 3).

4. Defendants shall file an answer to the Complaint within twenty (20) days from the date of this Order.

5. No later than May 31, 2005, Defendants shall inform the Court as to whether they are willing to submit this matter to mediation under the *pro bono* mediation program adopted by this Court.

s/ Thomas I. Vanaskie
Thomas I. Vanaskie, Chief Judge
Middle District of Pennsylvania